

HOUSE No. 4002

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, November 2, 2017.

The committee on Revenue to whom was referred the petition (accompanied by bill, House, No. 2593) of Michael J. Finn for legislation to authorize tourism destination marketing districts within cities and towns to be funded by room occupancy fee assessments, reports recommending that the accompanying bill (House, No. 4002) ought to pass.

For the committee,

JAY R. KAUFMAN

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**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to promote economic development in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after chapter 40W the following
2 chapter:-

3 CHAPTER 40X.

4 TOURISM DESTINATION MARKETING DISTRICTS.

5 Section 1. As used in this chapter the following words shall, unless the context clearly
6 requires otherwise, have the following meanings:

7 "Commissioner", the commissioner of revenue.

8 "Electors", a TDMD member, or a natural person designated by a TDMD member to vote
9 by proxy for such TDMD member; provided, however, that such designation shall be in writing
10 and filed with the city or town clerk; provided, further, that only one such proxy may be
11 designated by a TDMD member.

12 "Lead jurisdiction", the city or town in which the TDMD petition is filed.

13 "Local municipal governing body", the legislative body of a city or town.

14 "Lodging business", any person or entity subject to the excise imposed by chapter 64G.

15 "Lodging business owner", the owner of record, or the owner's authorized representative,
16 of a lodging business.

17 "Management entity", an entity designated in a TDMD plan to receive funds to carry out
18 and implement the purposes of the TDMD. The TDMD plan shall designate a regional tourism
19 council, as described in section 14 of chapter 23A, as the management entity. The management
20 entity shall be required to furnish a surety bond conditioned on the faithful performance of its
21 duties.

22 "Special assessment", a payment for supplemental services or improvements specified by
23 the TDMD plan.

24 "Standard government services", governmental functions, programs, activities, facilities,
25 improvements and other services which a municipality is authorized to perform or provide.

26 "Supplemental services", the provision of programs, activities, or information in addition
27 to the standard governmental services provided in the TDMD. Supplemental services may
28 include marketing, sales activities or events in addition to other tourism and travel promotion
29 activities.

30 "TDMD", a tourism destination marketing district formed pursuant to this chapter, which
31 is a geographic area with clearly defined boundaries. A TDMD may include multiple tourism
32 regions served by multiple regional tourism councils; provided, however, that there shall only be
33 one regional tourism council designated as the management entity for each TDMD. Only those

34 lodging businesses meeting the criteria described in the petition and TDMD plan shall be liable
35 for the TDMD's special assessment. The geographic regions within a TDMD need not be
36 contiguous.

37 "TDMD committee", a committee selected by the management entity's board of directors
38 responsible for implementing and overseeing the ongoing TDMD plan. A majority of the
39 membership of the TDMD committee shall be lodging business owners paying the TDMD
40 assessment.

41 "TDMD member", a lodging business owner whose lodging business meets the criteria by
42 which lodging businesses are assessed by the TDMD.

43 "TDMD plan", the strategic plan for the TDMD which sets forth the supplemental
44 services and programs, budget and special assessment structure, the criteria for inclusion of
45 lodging businesses, and the management entity and TDMD committee for the TDMD, and is
46 approved by the local municipal governing body as part of the creation of the TDMD. A TDMD
47 plan shall, within the limitations described in section 9, be updated at least once every 5 years by
48 the TDMD committee, and a copy thereof shall be mailed or delivered to each TDMD member.
49 The updated TDMD plan shall take effect upon the approval of a majority of the number of votes
50 cast by electors, with each elector's vote having the same weight. Any amendment to the TDMD
51 plan under section 9 shall be deemed to be an update of the TDMD plan.

52 Section 2. The rights and powers of a management entity related to a TDMD approved by
53 a municipal governing body shall include administering and managing the TDMD; formulating a
54 special assessment structure; accumulating interest; incurring costs or indebtedness; entering into
55 contracts; suing and being sued; employing legal and accounting services; undertaking planning,

56 feasibility and market analyses; developing, implementing, and conducting tourism marketing
57 and promotional activities; and other supplemental services or programs that would further the
58 purposes of this chapter.

59 All required procedures related to the formation, operation, and renewal of the TDMD
60 shall only be carried out by the lead jurisdiction. A lead jurisdiction is authorized to form a
61 TDMD that includes other cities or towns; provided, however, that the lead jurisdiction may not
62 vote to form a TDMD that includes the territorial jurisdiction of another city or town within the
63 TDMD's boundaries until it has received consent, by vote, from such other city or town's local
64 municipal governing body.

65 Section 3. The organization of a TDMD shall be initiated by a petition of the lodging
66 business owners within the proposed TDMD, which shall be filed in the office of the clerk of the
67 municipality that is to serve as the lead jurisdiction. The petition shall contain:

68 (1) the signatures of a majority of the TDMD members in the proposed TDMD;

69 (2) a map delineating the boundaries of the proposed TDMD;

70 (3) the initial list of lodging businesses to be included in the proposed TDMD. Lodging
71 businesses that commence operations after the formation of the TDMD and meet the criteria by
72 which lodging businesses are assessed by the TDMD shall be included in the TDMD pursuant to
73 section 4;

74 (4) the proposed TDMD plan, which shall set forth the supplemental services and
75 programs, update mechanism, criteria by which lodging businesses are assessed by the TDMD,
76 and budget and special assessment structures; and

77 (5) the identity and location of the management entity and the TDMD committee
78 members designated to implement and oversee the ongoing TDMD plan.

79 A copy of said petition shall be filed with the clerk of the lead jurisdiction within 30 days
80 of receipt of such petition by the clerk of the lead jurisdiction.

81 Section 4. The local municipal governing body of the lead jurisdiction shall hold a public
82 hearing within 60 days of the receipt of a petition. Written notification of such hearing shall be
83 sent to each TDMD member within the boundary of the proposed TDMD at least 30 days prior
84 to such hearing, by mailing notice to the address listed in the business records of the
85 municipalities proposed to be included within the boundaries of the TDMD or, if no such records
86 exist, by such other method as determined by the commissioner. Notification of the hearing shall
87 also be published for 2 consecutive weeks in a newspaper of general circulation in the area, with
88 the first date of publication beginning at least 30 days prior to such hearing. Such public notice
89 shall contain the proposed boundaries of the TDMD, the proposed special assessment rate, the
90 criteria by which lodging businesses would be assessed by the TDMD, the basis for determining
91 the special assessment and the proposed benefits to be conferred on assessed lodging businesses.

92 Prior to the public hearing, the local municipal governing body of the lead jurisdiction
93 shall direct the clerk of the lead jurisdiction or the clerk's designee to determine that the
94 establishment criteria has been met as set forth in section 3.

95 At the public hearing, the local municipal governing body of the lead jurisdiction shall
96 determine if the petition satisfies the purposes set forth and the establishment criteria of this
97 chapter and shall obtain public comment regarding the TDMD plan and the effect the proposed
98 TDMD will have on the lodging business owners within the proposed TDMD. If it appears that

99 said petition is not in conformity with the purposes and establishment criteria, said local
100 municipal governing body shall dismiss the petition. At the public hearing, the presiding officer
101 or clerk of said local municipal governing body shall read into the record the basis for
102 determining the special assessment pursuant to section 7 and the process by which TDMD
103 members may vote not to renew such TDMD.

104 Within 45 days after the public hearing, said local municipal governing body, in its sole
105 discretion, may by a vote declare the TDMD organized and describe the boundaries and service
106 area of the TDMD. Upon such declaration, the TDMD may commence operations.

107 Notice of the declaration of the organization of the TDMD shall be mailed or delivered to
108 each TDMD member within the proposed TDMD. The notice shall explain that membership in
109 the TDMD is irrevocable until the failure to renew the TDMD as provided in this section or the
110 dissolution under section 10, and shall include a description of the basis for determining the
111 special assessment, the criteria by which lodging businesses are assessed by the TDMD, the
112 special assessment rate and the proposed supplemental services to be provided by the TDMD.
113 Such notice shall be published for 2 consecutive weeks in a newspaper of general circulation in
114 the area, the last publication being not more than 30 days after the vote to declare the TDMD
115 organized.

116 Participation in the TDMD shall be permanent until after the discontinuation of the
117 TDMD as provided in this section, or until the dissolution of the TDMD under section 10. Non-
118 participating lodging business owners in the TDMD shall become TDMD members and shall be
119 assessed on the date that their business meets the criteria by which lodging businesses are
120 assessed by the TDMD. On or before the fifth anniversary of the organization of a newly created

121 TDMD and the fifth anniversary thereafter of the date of the most recent renewal of the TDMD
122 under this section, the TDMD committee of the management entity shall call a renewal meeting
123 of the TDMD members to review the history of the TDMD since its organization or, if
124 applicable, its most recent renewal, to propose an updated TDMD plan to succeed the then
125 current TDMD plan and to consider whether to continue the TDMD. The renewal meeting shall
126 be held at a location within the TDMD. Notice of the meeting shall be given to TDMD members
127 at least 30 days prior to the meeting. The TDMD shall continue after each renewal meeting if a
128 majority of TDMD members who are not more than 30 days in arrears in any payment due to the
129 TDMD and are present at the renewal meeting, in person or by proxy, vote to renew the TDMD.
130 Such renewal shall last for a term of 5 years commencing on the first day of the next fiscal year
131 of the TDMD.

132 If the TDMD members elect not to continue the TDMD, the TDMD committee shall
133 conclude the business of the TDMD prior to the sixth anniversary of the TDMD's creation, or of
134 the prior renewal vote, as the case may be, and proceed to discontinue the TDMD. Notice of the
135 discontinuation vote shall be given to the local municipal governing body of the lead jurisdiction,
136 which shall formally declare the TDMD dissolved as of such sixth anniversary; provided,
137 however, that the TDMD shall not be dissolved until it has received the accounts receivable due
138 to the TDMD and until it has satisfied or paid in full all of its outstanding indebtedness,
139 obligations and liabilities, or until funds are on deposit and available therefor, or until a
140 repayment schedule has been formulated and approved by said local municipal governing body.
141 Except as necessary to conclude the business of the TDMD, the TDMD shall not incur any new
142 or increased financial obligations after such sixth anniversary. Upon the dissolution of a TDMD,

143 the remaining assets shall first be applied to repay obligations of the TDMD, and then in
144 accordance with the TDMD plan, as updated.

145 Nothing in this section shall prevent the filing of a subsequent petition for a similar
146 project.

147 Section 5. Each TDMD shall be governed by a management entity's TDMD committee to
148 insure the implementation of the TDMD plan. The management entity and its TDMD committee
149 shall be set forth in the petition and TDMD plan.

150 Section 6. All lodging businesses described in the petition located within the proposed
151 TDMD shall be considered in the special assessment methodology for the supplemental services
152 and programs as outlined in the TDMD plan.

153 Section 7. By formal approval of a TDMD, the local municipal governing body of a lead
154 jurisdiction shall adopt the special assessment methodology for the financing of supplemental
155 services submitted in the TDMD plan for the TDMD.

156 The basis of such special assessment may be determined by a formula utilizing any one
157 or a combination of the following:

158 (1) different rates for varying classifications of lodging businesses;

159 (2) different rates for different benefit zones; or

160 (3) any other formula which meets the objectives of the TDMD.

161 The special assessment shall be equal to a percentage, not to exceed 3 per cent, of the
162 total amount of rent taxable under chapter 64G.

163 The methodology for determining the TDMD special assessment shall be set forth in the
164 original petition as required by section 3.

165 In addition to receiving funds from the TDMD special assessment, the management
166 entity shall be authorized to receive grants, donations or gifts on behalf of the TDMD.

167 Section 8. Assessed lodging businesses shall pay the TDMD special assessment to the
168 commissioner at the time provided for filing the return required by section 16 of chapter 62C. All
169 sums received by the commissioner under this chapter shall at least quarterly be distributed,
170 credited, and paid by the state treasurer, upon certification of the commissioner, to each
171 management entity in proportion to the amount of such sums received from the respective
172 TDMDs..

173 The special assessments collected shall be used solely to fund supplemental services
174 identified and approved in the TDMD plan for the TDMD.

175 Following establishment of the TDMD, if any return by an assessed lodging business is
176 not filed with the commissioner on or before its due date or within any extension of time granted
177 by him, there shall be added to and become a part of the special assessment a penalty of 1 per
178 cent of the amount required to be shown as the special assessment on such return for each month
179 or fraction thereof during which such failure continues, not exceeding, in the aggregate, 25 per
180 cent of said amount.

181 If any amount of the special assessment is not paid to the commissioner on or before the
182 date prescribed for payment of such special assessment, determined with regard to any extension
183 of time for payment, there shall be added to the amount shown as the special assessment on such
184 return a penalty of 1 per cent of the amount of such special assessment for each month or fraction

185 thereof during which such failure continues, not exceeding, in the aggregate, 25 per cent of said
186 amount..

187 An annual audit, certified by a certified public accountant, of the revenues generated, the
188 grants, donations and gifts received, and the expenses incurred by the TDMD shall be made
189 within 120 days of the close of the fiscal year, and shall be placed on file with the collector. Such
190 accounting shall be a public record.

191 The commissioner may promulgate rules and regulations for the assessing, reporting,
192 collecting, remitting and enforcement of the special assessment under this section.

193 Section 9. At any time after the establishment of a TDMD pursuant to the provisions of
194 this chapter, the TDMD plan upon which the establishment was based may, upon the
195 recommendation of the management entity's TDMD committee, with the concurrence of a
196 majority of the electors, be amended by the local municipal governing body of the lead
197 jurisdiction after compliance with the procedures set forth in this section; provided, however,
198 that a lead jurisdiction may not approve amendments to the boundaries of a TDMD that include
199 the territorial jurisdiction of a city or town not yet included in the TDMD without the consent, by
200 vote, from such other city or town's local municipal governing body.

201 Amendments to the TDMD plan which (1) provide for additional supplemental services
202 that affect more than 25 per cent of the total annual budget, (2) change the manner by which the
203 TDMD may incur indebtedness, (3) make changes to the special assessment methodology,
204 management entity, or TDMD committee, or (4) change the TDMD boundaries shall be subject
205 to the approval of the local municipal governing body of the lead jurisdiction; provided,

206 however, that said local municipal governing body, after a public hearing, determines that it is in
207 the public interest to adopt said amendments.

208 Said local municipal governing body shall give notice of the public hearing for
209 amendment. Such notice shall be published for 2 consecutive weeks in a newspaper of general
210 circulation in the area, with the first date of publication beginning at least 30 days prior to such
211 hearing, and shall specify the time and the place of such hearing and the amendments to be
212 considered.

213 Said local municipal governing body may, within 30 days of the public hearing and, in its
214 sole discretion, declare the amendments approved or disapproved. If approved, such amendments
215 shall be effective upon the date of such approval.

216 Upon the adoption of any amendment to the TDMD boundaries which increases the size
217 of the TDMD, any assessed lodging business owner to be added to the TDMD shall be notified
218 of the new boundaries of the TDMD in accordance with section 4.

219 Section 10. Any TDMD established or extended pursuant to this chapter may be
220 disestablished by declaration of the local municipal governing body of the lead jurisdiction in
221 either of the following circumstances:

222 (1) If said local municipal governing body finds there has been misappropriation of
223 funds, malfeasance, or a violation of law in connection with the management of the TDMD, it
224 shall hold a hearing on disestablishment. Notice of the hearing shall be mailed to all TDMD
225 members within the TDMD and shall be published in a newspaper of general circulation in the
226 area at least 14 days prior to such hearing; or

227 (2) During the operation of the TDMD, there shall be a 30-day period each year in which
228 the TDMD may be dissolved by petition to said local municipal governing body and a
229 subsequent decision by said local municipal governing body to authorize the dissolution. The 30-
230 day period shall begin each successive year on the anniversary of the date said local municipal
231 governing body formally approved the TDMD. In order to be considered by said local municipal
232 governing body, a petition to dissolve a TDMD shall contain the signatures of a majority of the
233 electors. Said local municipal governing body shall hold a public hearing within 30 days of
234 receipt of a completed petition on the issue of dissolution. Notice of the hearing shall be mailed
235 to all TDMD members within the TDMD and shall be published in a newspaper of general
236 circulation in the area at least 14 days prior to such hearing.

237 Following the public hearing, said local municipal governing body may declare the
238 TDMD dissolved; provided, however, that no TDMD shall be dissolved until it has satisfied or
239 paid in full all of its outstanding indebtedness, obligations, and liabilities; or until funds are on
240 deposit and available therefor; or until a repayment schedule has been formulated and
241 municipally approved therefor. In addition, the TDMD shall be prohibited from incurring any
242 new or increased financial obligations.

243 Any liabilities, either current or future, incurred as a result of action to accomplish the
244 purposes of the TDMD plan shall not be an obligation of the municipality. Said liabilities shall
245 be paid for entirely from special assessment revenue gained from the assessed lodging businesses
246 in the TDMD.

247 Upon the dissolution of a TDMD, any remaining revenues derived from the sale of assets
248 acquired with special assessments collected shall be refunded to the lodging businesses owners

249 in the TDMD in which special assessments were charged by applying the same methodology
250 used to calculate the special assessment in the fiscal year in which the TDMD is dissolved in
251 amounts proportionate to each lodging businesses' share of the total special assessments
252 collected in the fiscal year in which the TDMD is dissolved or in accordance with the TDMD
253 plan, as updated.

254 Section 11. The validity of an assessment levied pursuant to this chapter shall not be
255 contested in any action or proceeding unless the action or proceeding is commenced within 30
256 days after the formal approval of the TDMD by the local municipal governing body of the lead
257 jurisdiction. Any appeal from a final judgment in an action or proceeding shall be perfected
258 within 30 days after entry of judgment.